

## § 11.30

material access authorization by action of the Hearing Examiner or a Personnel Security Review Panel,<sup>3</sup> the following principle shall be applied by the Examiner and the Personnel Security Review Panel: Where there are sufficient grounds to establish a reasonable belief as to the truth of the information regarded as substantially derogatory and when the existence of this information supports a reasonable belief that granting access would be inimical to the common defense and security, this will be the basis for a recommendation for denying or revoking special nuclear material access authorization if not satisfactorily rebutted by the individual or shown to be mitigated by circumstance.

[45 FR 76970, Nov. 21, 1980, as amended at 47 FR 38683, Sept. 2, 1982; 64 FR 15647, Apr. 1, 1999]

### VIOLATIONS

#### § 11.30 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186

<sup>3</sup>The functions of the Hearing Examiner and the Personnel Security Review Panel are described in part 10 of this chapter.

## 10 CFR Ch. I (1–1–05 Edition)

of the Atomic Energy Act of 1954, as amended.

[57 FR 55070, Nov. 24, 1992]

#### § 11.32 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all regulations in part 11 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 11 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§11.1, 11.3, 11.5, 11.7, 11.8, 11.9, 11.16, 11.21, 11.30, and 11.32.

[57 FR 55070, Nov. 24, 1992]

## PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

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## Nuclear Regulatory Commission

## § 12.104

AUTHORITY: Sec. 203(a)(1), Pub. L. 96-481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99-80, 99 Stat. 183.

SOURCE: 59 FR 23121, May 5, 1994, unless otherwise noted.

### Subpart A—General Provisions

#### § 12.101 Purpose.

The purpose of this part is to state the regulatory requirements for award of attorney fees to eligible individuals and entities in certain administrative proceedings before the Nuclear Regulatory Commission, in implementation of the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), which provides for the award of attorney fees and other expenses to parties to “adversary adjudications”, as defined in 5 U.S.C. 504(b)(1)(C). In general, an “adversary adjudication” is an adjudication that is required by statute to be determined on the record after opportunity for hearing before an agency of the United States and in which the position of the agency, or any component of the agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. However, some agency adjudications are expressly excluded from coverage by 5 U.S.C. 504 (e.g., an adjudication for the purpose of granting or renewing a license) even though they fall within this general definition, and certain appeals before an agency board of contract appeals and Program Fraud Civil Remedies Act hearings conducted under 31 U.S.C. ch. 38 are expressly covered.

An eligible party may receive an award in an adversary adjudication when the party prevails over the Commission, unless the Commission’s position was substantially justified or special circumstances make an award unjust. The regulations in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

#### § 12.102 When the EAJA applies.

The EAJA applies to any covered adversary adjudication pending or com-

menced before the Commission on or after August 5, 1985.

#### § 12.103 Proceedings covered.

(a) The EAJA applies to the following proceedings:

(1) Hearings under the Program Fraud Civil Remedies Act (31 U.S.C. 3801-12);

(2) Any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607); and

(3) Adversary adjudications conducted by the Commission pursuant to any other statutory provision that requires a proceeding before the Nuclear Regulatory Commission to be so conducted as to fall within the meaning of “adversary adjudication” under 5 U.S.C. 504(b)(1)(C).

(b) The Commission’s failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA. Whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

#### § 12.104 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term “party” is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section